

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9136 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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MOHD.SALIM @ MAKKHAN S/O. MOHD.HUSSAIN SHEIKH

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 15th September, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The grounds of detention suggest that one offence under Chapters XVI & XVII of IPC, and two offences under Prohibition law have been registered against the petitioner. Further, the police had collected some evidence by examining witnesses to establish that the activities of the petitioner, apart from being anti-social, are also prejudicial to the maintenance of public order.

Be it noted that one Israil Nazir Ahmed Shaikh is also the co-accused in the three offences registered against the petitioner. There are other 18 offences registered against the said Israil for violation of prohibition law, and one more offence under the IPC. The said Israil also was detained under the order dated 19th February, 1999 under the Act. The said order of detention was challenged before this court in Special Civil Application No. 1913/99. This court (Coram : Mr. Justice D.C. Shrivastav) under its judgment dated 24th April, 1999, held that though several offences were registered against the said detenu, neither of the said offences amount to prejudicial to the maintenance of public order. Besides, the statements given by the witnesses also do not disclose the element of disturbance of public order.

In the present case, the petitioner is co-accused with the said Israil in three of the offences. The statements given by the witnesses, though are of different dates and of different incidents, disclose the similar nature of activities. Since the Bench of this court has held such activities not to be prejudicial to the maintenance of public order, I shall follow suit. In the present case also, it is, therefore, required to be held that the materials on record do not disclose the petitioner's activities to be prejudicial to the maintenance of public order. The petitioner, therefore, could not have been detained under the Act. The continued detention of the petitioner is also unwarranted.

Petition is, therefore, allowed. The impugned order dated 15th September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI\*